IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21316 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALVINDERSING ALIAS TOTUSING S/O SAHEBSING UDE - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MS KRISHNA U MISHRA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 22/11/2005

ORAL JUDGMENT

1. Balvindersing alias Totusing S/o. Sahebsing Ude-petitioner has filed this habeas corpus petition

under Article 226 of the Constitution of India praying for quashing an setting aside the order of detention dated 08.06.2005 passed by detaining authority under the provisions of the Gujarat Prevention of Anti-social activities Act, 1985 (for short 'PASA Act') which is illegal null and void and also violative of Article 14, 19, 21 and 22 of the Constitution of India. The present petition was filed on 03.10.2005 and my learned brother Hon'ble Mr. Justice A.S. Dave issued RULE on 21.10.2005 which was made returnable within four weeks and that is why this matter has come up before this Court.

2. Mr. Amrish Pandya, learned Advocate appears on behalf Ms. Krishna U. Mishra learned Advocate for the petitioner. Learned Advocate for the petitioner invited my attention to the order of detention dated 08.06.2005 passed by detaining authority. He further stated that the petitioner was arrested on the same day and was send to Nadiad jail.

3. Learned Advocate for the petitioner also invited my attention to the grounds supplied in the

order of detention dated 08.06.2005. As the grounds of detention two offences were shown as registered against the detenu. First offence was registered as being C.R. No.5252/04 dated 18.09.2004 at Naranpura police station punishable under Section 66.1B, 65E and 81 of the Bombay Prohibition Act. In that case authority confiscated 63 litters of country liquor along with one 'Yamaha' motorcycle valued at Rs.20,000/-, one suit-case valued at Rs.50/- and Rs.50/- in cash. Second offence was registered as being C.R. No.915/05 dated 03.06.2005 at Prohibition Station (West Division) punishable under Section 66B and 65E of the Bombay Prohibition Act. In that case authority confiscated 87.50 litters of country liquor along with one scooter valued at Rs.1700/.

4. Learned Advocate for the petitioner further stated that on the basis of two offences mentioned above petitioner was termed as 'Bootlegger' within the meaning of Section 2(b) of the PASA Act. He has also stated that the authority has also passed order under sub-Section (2) of Section 3 with a view to prevent the petitioner from acting in any manner

prejudicial to the maintenance of 'public order'.

5. Learned Advocate for the petitioner has placed reliance on the judgment of apex Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City & Another reported in AIR 1989 SC 491 and Division Bench judgment of this Court in L.P.A. No.223 of 2000 (Coram: M.R. Calla & R.R. Tripathi,J.J.) decided on 22nd August, 2000 in the case of Ashok Makwana Vs. State of Gujarat. He has also relied on judgment of this Court in S.C.A. No.20420 of 2005 decided on 15.11.2005 in the case of Rajubhai Pratapbhai Panpatil Vs. Commissioner of Police, Surat City (Coram: K.M. Mehta,J.). Learned Advocate for the petitioner has also relied upon the judgment of the apex Court in the case of Darpan Kumar Sharma alias Dharban Kumar Sharma Vs. State of Tamil Nadu and others reported in AIR 2003 SC 971.

6. Heard, Mr. Gohil, learned A.G.P. for respondent-detaining authority and he has tried to defend the order of detention as well as grounds stated therein.

7. In view of the aforesaid facts and circumstances of the case, this Court is of the view that in this case only material shown is two registered criminal cases and on the basis of that it cannot be said that activity of the detenu has become a threat to the maintenance of 'public order' and 'public health'. The offences committed by the petitioner pertains to prohibition to which I have already made reference in my earlier part of the order. Mere involvement of petitioner in bootlegging activity may not amount to dangerous activity by detenu and mere mention of them unless supported by any material cannot be said to be material and germane for the purpose of arriving at subjective satisfaction that activity of petitioner is prejudicial to maintenance of 'public order' and 'public health'.

7.1 I have also gone through the judgment of the apex Court in the case of Piyush Kantilal Mehta(Supra), Division Bench judgment of this Court in the case of Ashok Makwana (Supra)and also judgment of the apex Court in the case of Darpan

Kumar Sharma(Supra). In view of the ratio laid down in all these cases, aforesaid decisions support the case of the petitioner. Therefore, there was no material before the detaining authority, except, two criminal cases registered against the petitioner-detenu to arrive at the subjective satisfaction that the activites of the petitioner is prejudicial to maintenance of 'public order' and 'public health'. Therefore, it cannot be said that the activities of the petitioner-detenu amount to disturbance of 'public order', at the most it may amount to disturbance of 'law and order' situation and not 'public order'. Therefore, the order of detention passed by the detaining authority is contrary to law and deserves to be quashed and set aside.

8. In the present case, also, there was no ground with the detaining authority, except, two criminal cases registered against the petitioner to arrive at subjective satisfaction that activity of detenu is prejudicial to the maintenance of 'public order' and 'public health'. Therefore, the order of detention passed by detaining authority is contrary

to law and deserves to be quashed and set aside.

9. In view of the above, this petition is allowed and order of detention dated 08.06.2005 passed by Commissioner of Police, Ahmedabad city is hereby quashed and set aside. Detenu is, therefore, ordered to be set at liberty forthwith if he is not required in connection with any other case by the authority. Rule made absolute to the aforesaid extent with no order as to costs. D.S. permitted.

(K.M.MEHTA,J.)

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